

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2034 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RM PATEL MEDICAL INSPECTOR OF FACTORIES

Versus

SECRETARY HEALTH AND FAMILY WELFARE DEPTT.

Appearance:

MR PK JANI for Petitioner
MR HC PATEL for Respondent No. 1
MR SP HASURKAR for Respondent No. 2
None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/07/1999

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Challenge has been made by the petitioner to the order annexure 'D' under which the petitioner was posted as Assistant Professor, State Health & Family Welfare Institute, Ahmedabad from the post of Medical Inspector

of Factories, Ahmedabad. Challenge has been made to this order on the ground that Dr. V.B. Patel, respondent No.3 was posted as Medical Inspector of Factories, Ahmedabad is not qualifying to hold that post.

3. The service rules regulating the recruitment on the post of Medical Inspector of Factories are on the record as annexure 'C'. These are the statutory rules known as Medical Inspector of Factories, (in the Factory Inspectorate Service Class - I) Recruitment Rules, 1992 framed in exercise of powers conferred by proviso to Article 309 of the Constitution.

4. Learned counsel for the petitioner does not dispute that the petitioner was came to be posted as Medical Inspector of Factories by virtue of clause (b) of Rule (2) of Rules aforesaid, which reads as under:

(b) by temporary transfer on deputation basis from amongst the persons working on the cadre of Gujarat Public Health Service Class-I, under the Health and Family Welfare Department:

5. Learned counsel for the petitioner also does not dispute that the respondent No.3 is the officer in the cadre of Gujarat Public Health Service Class-I under the Health and Family Welfare Department. It is also not disputed by the learned counsel for the petitioner, on being asked by the Court, that the respondent No.3 has been posted as Medical Inspector of Factories under clause (b) of Rule (2) of the Rules aforesaid.

6. Grievance made that the respondent No. 3 is not possessing the qualification as prescribed in Rule (3) and his posting as Medical Inspector of Factories is contrary to rules, is not of any substance and merits. These qualifications are necessary where a candidate has to be appointed on the post of Medical Inspector of Factories by direct selection. Three modes of appointment on the post of Medical Inspector of Factories have been provided under the rules aforesaid. First is by promotion, second by clause (b) of the rule-2 as reproduced above and third by direct selection. So challenge to the posting of the respondent No.3 on the post of Medical Inspector of Factories on the ground as stated earlier is devoid of any substance. The petitioner's posting as Medical Inspector of Factories was only on deputation and a temporary posting and in case the respondents have ultimately decided to take him from that post and to bring him on his parent post, no exception can be taken to the same. I fail to see how

otherwise any prejudice will be caused to the petitioner by this posting when he has been posted on his original post and more so at the same place. If there may be some other consideration to continue on the post of Medical Inspector of Factories i.e. extra post benefits but those are not the matters for consideration of this court. The substance of the matter has to be considered and when clause (b) of Rule (2) of the rules aforesaid provides for posting of a Gujarat Public Health Services Class-I officer by temporary transfer on deputation on the post of Medical Inspector of Factories, the officer concerned could not acquire a right to continue on the post. It is at the pleasure of the appointing authority and it has not acted illegal in case some other officer has been posted vice the petitioner. The petitioner has already worked for more than two years on that post and he should have been felt satisfied even if extra post benefits are there.

7. In the result, this petition is wholly misconceived and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-